THE HON'BLE SRI JUSTICE V. ESWARAIAH
AND
THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

W.P.No.15358 of 2001

Between:
The Govt. of A.P. rep. By its Secretary, Finance and Planning Dept. Secretariat, Hyderabad and others.

..... PETITIONER

AND

K.Narsinga Rao and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V. ESWARAIAH
AND
THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

W.P.No.15358 of 2001

ORDER: (Per Hon'ble Sri Justice V. Eswaraiah)

1. This writ petition is filed challenging the order, dated 23.02.2001, passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in O.A.No. 4690 of 2000, whereby it directed the writ petitioners to regularize the services of the respondents herein in terms of G.O.Ms.No.212, Finance & Planning (FW.PC.III) Department, dated 22.4.1994, and G.O.(P).No.112, Finance & Planning (FW.PC.III) Department, dated 23-07-1997.

2. The Government of Andhra Pradesh issued G.O.Ms.No.212, dated 22-04-1994, and by the said G.O., the Government decided that the services of such persons who worked continuously for a minimum period of 5 years and are continuing as on 25.11.1993 be regularized by the appointing authorities subject to fulfillment of the following conditions:

> 1) The persons appointed should possess the qualifications prescribed as per rules in force as on the date from which his/her services have to be regularised.
> 2) They should be within the age limits as on the date of appointment as NMR/Daily wage employee.
> 3) The rule of reservation wherever applicable will be followed and back-log will be set- off against future vacancies.
> 4) Sponsoring of candidates from Employment Exchange is relaxed.

5) Absorption shall be against clear vacancies of posts considered necessary to be continued as per work-load excluding the vacancies already notified to the Andhra Pradesh Public Service Commission / District Selection Committee.

6) In the case of Workcharged Establishment, where there will be no clear vacancies, because of the fact that the expenditure on Workcharged is at a fixed percentage of P.S. charges and as soon as the work is over, the services of workcharged establishment will have to be terminated, they shall be adjusted in the other departments, District Offices provided there are clear vacancies of last Grade Service."

3. G.O. (P).No.112, dated 23-07-1997, was issued in pursuance of a scheme formulated under the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act, 1994 (Act No. 27 of 1998) and by the said G.O., the Government decided that the services of part time employees who worked continuously for a minimum period of 10 years and are continuing as on 25.11.1993 be regularized by the appointing authorities subject to fulfilment of the following conditions:

1. Absorption shall be against clear vacancies of posts considered necessary to be continued as per work-load excluding the vacancies already notified to the Andhra Pradesh Public Service Commission or as the case may be, the District Selection Committee.
2. The persons appointed should possess the qualifications prescribed as per rules in force as on the date from which his or her services have to be regularised.
3. The person should be within the age limit as on the date of appointment as part-time employee.
4. The Rule of Reservation wherever applicable will be followed and backlog will be set off against future vacancies.
5. The sponsoring of candidate from Employment Exchange is relaxed.
6. If there are two candidates, one part-time and the second one a full-time employee (Daily Wage employee) of any category or name and there exists only one vacancy, the senior most between the two in terms of continuous service already rendered prior to 25-11-

1993 treating two years of part-time service as one year of full-time service, relative seniority will be calculated and regularisation will be suggested for the senior among the two accordingly.

7. The regularisation of services of full-time employee already made in terms of G.O.Ms.No.212, Finance & Planning (FW.PC.III) Department, dated 22-04-1994 will not be reopened for giving effect to the present order."

4. The learned Government Pleader appearing for the writ petitioners submits that this issue is squarely covered by a recent judgment of the Supreme Court in ***A. Manjula Bhashini and Others*** Vs. ***The Managing Director, A.P. Women's Cooperative Finance Corporation Ltd. and Another*** delivered in Civil Appeal No. 3702 of 2006 and batch, decided on July 6, 2009 and the Supreme Court in paras 42 and 43 held,

"42. The question which remains to be considered is whether the Division Bench was justified in holding that all daily wage employees who completed 5 years service on the date of enforcement of Act No. 27 of 1998, i.e., 19.8.1998 would be entitled to be considered for regularisation of their services. A reading of paragraphs 54, 67, 68 and 72 of the impugned judgment shows that even though the Division Bench did not find the cut off date i.e. 25.11.1993 specified in first proviso to Section 7 for determining the eligibility of daily wage employees for regularisation to be arbitrary, irrational or discriminatory, yet it changed the said date from 25.11.1993 to 19.8.1998 solely on the premise that Act No. 27 of 1998 was enforced with effect from that date. In our view, once the Division Bench negatived the challenge to the validity of Act Nos. 3 of 1998 and 27 of 1998, there was no warrant for altering the date of eligibility specified in first proviso to Section 7 of the 1994 Act and thereby extend the zone of eligibility of daily wage employees who could be considered for regularisation. As a corollary, we hold that the declaration made by the Division Bench that all persons who completed 5 years service as on the date of coming into force of Act No. 27 of 1998 would

be entitled to be considered for regularisation of their services is legally unsustainable and is liable to be set aside.

43. In the result, the appeals filed by the employees (C.A. Nos. 3702, 3703, 3704, 3705, 3706, 3707, 3709, 3710, 3721, 3733, 3734, 3737, 3742, 3744, 3748, 3749 and 3751 of 2006) are dismissed and those filed by the State Government and agencies/instrumentalities of the State (C.A. Nos. 3685, 3712, 3713, 3714, 3715, 3716, 3717, 3718, 3723, 3724, 3726, 3727, 3728, 3729, 3730, 3731, 3732, 3750, 3752, 3753, 3754 and 3755 of 2006) are allowed. The declaration made by the Division Bench that the ban on regularisation will be effective from 19.8.1998 i.e. the date on which Act No. 27 of 1998 came into force and that all persons who have completed 5 years service as on that date would be entitled to be considered for regularisation of service is set aside. It is, however, made clear that the daily wage employees and others who are covered by Section 7 of the 1994 Act (amended) and whose services have not been regularised so far, shall be entitled to be considered for regularisation and their services shall be regularised subject to fulfillment of the conditions enumerated in G.O. dated 22.4.1994. With a view to obviate further litigation on this issue, we direct the Government of Andhra Pradesh, its officers and agencies/instrumentalities of the State to complete the exercise for regularisation of the services of eligible employees within four months of the receipt/production of copy of this order, without being influenced by the fact that the application, writ petition or appeal filed by any such employee may have been dismissed by the Tribunal or High Court or this Court. Since some of the appeals decided by this order relate to part time employees, we direct that similar exercise be undertaken in their cases and completed within four months keeping in view the conditions enumerated in G.O.(P). No. 112 dated 23.7.1997."

5. Respondents were appointed on 10.02.1986 on part-time basis and admittedly they have not completed ten years of service as on 25-

11-1993 and they have not fulfilled the conditions as laid down under G.O.(P). No. 112, dated 23-07-1997, and as such, they are not eligible for regularisation.

6. The Supreme Court also reversed the view taken by the Tribunal that the applicants before it were in service as on 25.11.1993 and as and when they complete ten years of service, they are entitled for regularization. In the aforesaid judgment of the Supreme Court, it was laid down that in terms of G.O. (P).No.112, dated 23-07-1997, the part-time employees should have completed ten years of service and continued to be in service as on 25.11.1993 in order to get the eligibility for regularization. In view of the above Judgment of the Supreme Court, the order of the Tribunal is not sustainable and liable to be set aside

7. In the present case, the respondents claimed to have worked on part-time basis from 10.02.1986 onwards. Therefore, following the judgment of the Supreme Court referred to above, the writ petition is allowed setting aside the order of the Tribunal. No order as to costs.

_____

JUSTICE V. ESWARAIAH

_____

JUSTICE VILAS V. AFZULPURKAR

Dt.28.08.2009
usd